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November 14, 2011

By E-Filing

Cynthia Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: No. FD 35087 (Sub-No. 8), Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company

Dear Ms. Brown:

Enclosed herewith for filing in the above-referenced sub-docket please find Village of Barrington's Motion for Leave to File Rebuttal, accompanied by the Supplemental Verified Statement of Robert J. Andres (designated as Barr-2).

Very truly yours,

Richard H. Streeter
Counsel for the
Village of Barrington, IL

RHS:rs
Enclosure
cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON D.C.

Docket No. FD 35087 (SUB-NO. 8)

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
—CONTROL—
EJ&E WEST COMPANY

MOTION OF VILLAGE OF BARRINGTON, IL FOR LEAVE TO FILE THIS REBUTTAL TO CORRECT MATERIAL ERRORS OF FACT AND LAW IN CN'S REPLY IN OPPOSITION TO THE VILLAGE OF BARRINGTON'S PETITION SEEKING IMPOSITION OF ADDITIONAL MITIGATION AND TO SUBMIT ADDITIONAL EVIDENCE TO CORRECT PRIOR EVIDENTIARY SUBMISSION

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November 14, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON D.C.

Docket No. FD 35087 (SUB-NO. 8)

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
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MOTION OF VILLAGE OF BARRINGTON, IL
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CN'S REPLY IN OPPOSITION TO THE VILLAGE OF BARRINGTON'S
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AND TO SUBMIT ADDITIONAL EVIDENCE
TO CORRECT PRIOR EVIDENTIARY SUBMISSION

The Village of Barrington ("Barrington") respectfully requests that the Surface Transportation Board ("Board") allow this brief rebuttal to correct several material errors in CN'S Reply to Barrington's Petition Seeking Imposition of Additional Mitigation. If left unchallenged, these errors could mislead the Board and the public. In addition, in response to CN's evidence that CN's crossing gates in Barrington operate in tandem, and all of them use constant warning time ("CWT") circuitry, Barrington requests the Board to allow it to submit supplemental evidence that properly considers CN's evidence and modifies the conclusions presented to the Board in Barrington's Petition.

I. CN'S INTERPRETATIONS OF STANDARDS GOVERNING PETITIONS SEEKING ADDITIONAL MITIGATION CONDITIONS CANNOT BE SQUARED WITH THE BOARD'S STATED EXPLANATION OF ITS OVERSIGHT JURISDICTION.

In a blatant attempt to eviscerate the Board's ability to respond to Barrington's request for additional mitigation, CN has posited various

interpretations of FMC 72, "new evidence", 49 U.S.C. § 722(c), and 49 C.F.R. § 1117.1. If the Board were to accept CN's interpretations, the standards would be such that the Board would be prevented from imposing any additional conditions during the oversight period to address operational problems that arise after the transaction was consummated, other than with CN's acquiescence. According to CN, under its interpretation, FMC 72 merely "provides a basis for modifying [mitigation] conditions based on new evidence about 'the effectiveness of the various conditions' the Board imposed, ... not for imposing entirely new conditions."[1]

CN's interpretation cannot be squared with the actual, literal wording of the Board's decision. As the Board carefully explained when it discussed the "Monitoring & Oversight Condition", "[t]he Board retains jurisdiction to **impose additional conditions and take other action if, and to the extent, the Board determines it is necessary to address matters related to operations following the transfer of control.**"[2]

Further clarification of the purpose of the oversight period is provided by the Board's oversight and monitoring website for this particular transaction where, as part of the FAQ section, the Board responded to the question, **"What happens during the 5-year oversight period?"** as follows: "The Board ***retains jurisdiction to impose additional conditions*** and take other action if, and to the extent, the Board determines it is necessary ***to address matters***

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[1] CN Reply at 8, n17.
[2] Decision No. 16 at 26 (emphasis added).

related to operations and environmental mitigation following the transfer of control." (emphasis added)

The Board's explanations make it clear that the Board did not consider its oversight jurisdiction to be limited only to consideration of the "effectiveness" of previously imposed conditions. Of course, if CN felt that the Board was in error in retaining oversight of the transaction for such purposes and that later imposition of additional conditions would prejudice it, CN should have challenged the Board's authority by filing a timely motion for reconsideration or by seeking judicial review. It did not do so.

CN also says (Reply at 9) that the Board has no jurisdiction under FMC 72 to hear "allegations of 'material error.'" CN has not cited any precedent that supports its contention that the Board is precluded from reviewing allegations of material error in the course of its oversight. CN's allusion to *Friends of Sierra Railroad, Inc. v. I.C.C.*, 881 F.2d 663, 667 (9th Cir. 1989) is baseless. The court never suggested that the I.C.C. was powerless to consider allegation of material error on reopening or reconsideration. Instead, it simply ruled that if the Commission, after judicial review, refused to reopen a case where the petition alleges only "material error," the court would lack jurisdiction to review the decision not to reopen. *Id.* at 666-67. As shall be demonstrated, and despite CN's protestations to the contrary, in seeking additional mitigation, Barrington has introduced new evidence and not relied solely on material error.

In any event, there is nothing in FMC 72 that would prohibit the Board from considering allegations of material error and addressing matters that are related to or caused by the material error. Plainly, if new evidence shows that additional conditions are required to address particular post-Transaction problems, whether or not the difficulties are attributable to a material error in the Board's analysis, the Board should correct the error in order to address the problems, even if it requires the Board to impose additional mitigating conditions. This result is particularly important in situations such as that herein where the Board's environmental review of the matter was so condensed that the Board, only a matter of days after issuing the FEIS, issued its final decision and adopted HDR's "peak period" conclusions without addressing Barrington's 2008 Traffic Study in any fashion.

CN's also argues that Barrington may not assert the catch-all provision of 49 C.F.R. § 1117.1 in seeking additional mitigation. CN's argument is but a tempest in a teapot. Although CN has cited a number of Board decisions to support its contention that reopening is the only means for Barrington to seek relief, it has not pointed to a single precedent that would disallow reliance on that provision in order to demonstrate the need to commence a new proceeding or an additional sub-docket, which has been done in this matter. While CN has cited various decisions that "reopened" the lead docket case in order to document negotiated settlements and provide an enforcement mechanism to ensure CN's compliance with the terms of those voluntary settlements, it is

noted that none of those decisions specifically reference FMC 72. Such "re-opens" are little more than a pro forma procedural step.

CN's position ultimately boils down to the dubious proposition that Barrington's request for additional mitigation is problematic because it is "substantial". According to CN, "the law and the Board's practice impose demanding threshold requirements on petitions seeking *substantial* retroactive changes to final decisions" (emphasis added). What this means is that CN is protesting the potential lawful imposition of the Board's authority to mitigate during the oversight period *based on dollars* and not on the explicit wording of the Board's retention of oversight jurisdiction. CN used a similar argument in fighting the Board's grade separation mitigation in Aurora and Lynwood in oral arguments before the DC Court when Judge Tatel posited the following (Transcript at P31): "...let's assume the condition only cost $25." CN's Counsel quickly replied, "We wouldn't be here." Just as the Court found that rightfully imposed mitigation authority is not limited to an upper dollar limit, so too should CN's arguments be discarded in this instance.

In any event, CN has been provided with a full opportunity to voice its objections whether the instant matter is treated as a form of reconsideration or as a reopening. Plainly, 49 U.S.C. § 722(c) provides the Board with jurisdiction, at any time, on its motion, based on material error, new evidence, or substantially changed circumstances to reopen a proceeding; grant reconsideration of a Board action; or change an action of the Board. In this instance, if it determines that Barrington's arguments appear to have merit

and that it is entitled to additional mitigation, the Board will obviously reopen Decision No. 16 in order to impose the additional mitigation.

As will be demonstrated, Barrington, despite CN's vociferous contentions to the contrary, has presented new evidence that was not reasonably available to it at any time during the course of the original proceeding. Furthermore, the new evidence has identified and quantified the material error in the Board's original decision. Thus, the evidence before the Board today requires it to impose additional mitigation to address the post-Acquisition status of operations through Barrington which are equivalent in impact to those in Aurora and Lynwood.

II. BARRINGTON'S COMPARATIVE EVIDENCE IN SUPPORT OF ADDITIONAL MITIGATION WAS NOT REASONABLY AVAILABLE DURING THE COURSE OF THE ORIGINAL PROCEEDING.

In *Friends of Sierra R.R. Co. v. I.C.C.*, 881 F2d at 666-67 the court, in finding that *newly raised* evidence is not the same as *new* evidence, further commented (emphasis added) that "evidence that was ***reasonably available*** to the parties before the proceeding is not new evidence for the purposes of the statute." In the instant proceeding, conclusive evidence of the disparate treatment of the Village of Barrington as compared with Lynwood and Aurora was not reasonably available to Barrington until long after the Board issued its final decision on December 24, 2008. Instead such evidence only became available to Barrington ***after*** Civiltech *performed* its 2011 Traffic Study, which, by applying identical standards to both Barrington and Aurora, definitively

demonstrates that Barrington had been treated in a disparate fashion than Aurora and Lynwood.

CN cannot avoid the fact that SEA acknowledged in the VOBTOA that the VISSIM analysis tool was the appropriate tool to analyze the unique conditions in Barrington. It necessarily follows that had HDR applied that tool across the board without the material errors that have been noted, the Barrington VISSIM results combined with the new evidence for the Aurora crossing would have led the Board to order a grade separation at the U.S. Route 14 crossing in Barrington as well -- based on the necessity to use its "discretionary" authority to condition in a manner that is not arbitrary in selecting "winners" and "losers".

Although CN says (Reply at 13) that the "'new evidence' in the 2011 Study and the accompanying verified statement is de minimus and immaterial," that is not the case. The newly discovered evidence is certainly not de minimus and immaterial and it is much more than just the 2011 observations of CN train operations in Barrington as suggested in the CN Reply. The new evidence is the significant finding of the 2011 Civiltech study that, when a high-level analysis tool that is capable of analyzing the unique conditions in Barrington is applied in the same manner to the Ogden Avenue crossing in Aurora (a crossing where the delay impacts of the Transaction were so great that the Board ordered a grade separation as the appropriate mitigation), the level of Transaction-related impacts at both crossings is virtually indistinguishable.

CN also suggests (Reply at 11) that "Barrington could have again raised its arguments based on its 2008 Study by seeking reconsideration". That position disregards the fact that the new evidence that Barrington has presented in its instant Petition is not based on the 2008 Study, but instead focuses on the disparate treatment accorded Barrington. Because any need for such comparative evidence could not have been foreseen or planned for until after the Board issued Decision No. 16, it was not available for purposes of reconsideration and would not become available until after the post-Transaction 2011 study was completed. That the 2011 study supports Barrington's contentions from the 2008 study about the impacts of the transaction at US Route 14 and IL Route 59, only underscores the reality that the HDR analysis methodology used in 2008 in preparing the FEIS was fundamentally flawed.

Furthermore, given that Barrington's 2008 analysis was never directly addressed and refuted in the FEIS or Decision No. 16, returning to the Board with pre-acquisition data that had already been dismissed without comment would have been pointless. As Barrington recognized, in order to demonstrate the disparate treatment, it would be necessary for it to prepare and present a traffic study that would compare its situation with that in Aurora, which was awarded grade separation mitigation.[3] Until such time as CN acquired EJ&E and commenced operations, any such study would have been premature.

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[3] Attention is also invited to Attachment 1 to the Supplemental Verified Statement of Robert J. Andres which compares the Board's expressed reasoning for ordering or

Additionally, in the face of CN's vigorous appellate court attack on the Board's decision requiring it to fund a substantial portion of the cost of grade separations in Aurora and Lynwood, Barrington would have been required to prepare its analysis with the full awareness that a judicial decision finding the Board had erred would result in an extreme, unwarranted waste of taxpayer funds. As a result, it was wholly reasonable for Barrington to await the Court's March 15, 2011 decision that affirmed the Board's determination that CN should be required to fund a significant portion of the cost of grade separations at Aurora and Lynwood before it hired Civiltech to perform its comparative analysis.

Based on the complexity of the impacted area, Barrington could and did foresee the necessity to conduct a traffic analysis to determine the overall severity of the potential impact on the Village. That caused it to hire Civiltech to perform the initial 2008 VISSIM study. That study served as the basis for determining how involved Barrington would need to be throughout the proceeding to protect its interests. However, Barrington could not have foreseen that, in response to the analysis it supplied to SEA, HDR would perform its own flawed VISSIM study that would be used to present the Board with a distorted and misleading conclusion that materially affected Barrington and subjected it to disparate treatment from that afforded Aurora and Lynwood. As a result, Barrington was not in a position of being able to

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declining to award grade separations at the eight crossings where SEA had concluded that mitigation was necessary.

demonstrate and document the impact of the disparate treatment at any stage of the Board's environmental review.[4]

Because the disparate treatment could not be conclusively demonstrated and proven until after Civiltech completed its 2011 study – the timing of which was dependent upon the completion of the CN-instigated judicial review which could have overturned the grade separation mitigation – it is disingenuous for CN to suggest that Barrington should have anticipated the need to engage in a series of costly, comparative traffic studies to ensure that it would be afforded the same treatment as every other community on the EJ&E that could have possibly been awarded grade-separation relief by the Board in Decision No. 16. Without question, the Board should summarily reject such an outrageous requirement. The Board should find that the evidence of disparate treatment that Barrington has presented is new evidence and was not reasonably available to Barrington when the record in this proceeding was developed during the unusually condensed EIS review that occurred in late 2008 following the issuance of the DEIS.

Moreover, the new comparative evidence that Barrington has presented accurately demonstrates that the situation in Barrington is indistinguishable

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[4] Because the results of the comparative study were not available at any time during the earlier stage of the proceeding, Barrington could not have relied upon them either before the Board or during the course of judicial review. As a close reading of the Court's opinion proves, the Court simply declined to consider the merits of Barrington's charge that the 2008 Traffic Study showed that vehicle delays for Hough Street and Northwest Highway would far exceed the 2400 minute threshold because the issue was not raised in the Community Petitioners' Opening Brief. That holding has no impact on the new comparative evidence that Civiltech has developed based on CN's post-Acquisition operations through Barrington and Aurora.

from that in Aurora (and Lynwood). If the Board's retention of jurisdiction to impose additional conditions during the oversight period established by FMC 72 is to be meaningful, the Board must impose additional mitigation so that Barrington receives a level of mitigation equivalent to the similarly situated communities of Aurora and Lynwood.

III. CN'S ADMINISTRATIVE FINALITY ARGUMENTS ARE BASELESS.

Throughout its Reply, CN repeatedly insists that it would be unfair if the Board were to require any further grade crossing mitigation because it "relied on the finality of the Board's decision in closing the Transaction."[5] CN's current position must be reviewed in light of its previous actions. First, CN consummated the Transaction on January 31, 2009. It did so knowing that Barrington and others had sought judicial review and that the Court could potentially reverse the Board's decision not to award Barrington and others additional relief. Second, although it now seeks to downplay and avoid consideration of its offer,[6] the record shows that CN proactively agreed to whatever mitigation the Board would deem necessary if it were allowed to take control of EJ&E before the Board completed it environmental review. That offer plainly shows that CN realized that it had a great financial deal that would not be severely impacted even if it had to pay additional costs to construct grade separations at various grade crossings that would be substantially affected by the Transaction.

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[5] CN Reply at 5, n8; 9, n18; 15; 19
[6] Id. at 5, n8.

Finally, when it consummated the deal on January 31, 2009, CN was well aware that the Board had specifically retained oversight jurisdiction to impose additional conditions. Nevertheless, CN chose not to contest the Board's right to do so. Not surprisingly, CN's position regarding the meaning of the Board's reservation of jurisdiction to impose additional conditions is reminiscent of its defense when it was found guilty of knowingly violating the Board's explicit oversight requirement that CN was to report "the date and descriptive information about each crossing blocking occurrence on the EJ&E rail line that exceeds 10 minutes in duration."[7]

Barrington respectfully submits that CN's arguments about the Board's oversight intent and jurisdiction are akin to "CN's alleged 'good faith' interpretation" that CN management proffered to the Board during the course of the public hearing that the Board held on April 28, 2010 for the express purpose of having CN management explain how and why railroad management was so "unclear on the concept" when it came to reporting instances of ***all*** blocked crossing incidents as required in Decision 16.

As the transcript of that oversight proceeding clearly reflects, CN management defended its failure to report ***all*** incidents of blocked crossings with the specious suggestion that what the decision said and what the Board actually meant were two different things. In its Decision No. 27, served December 21, 2010, the Board rejected CN's interpretation and found that it

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[7] Decision No. 16 at 26.

was "contradicted by both the CN staff admissions and the plain text of the *Approval Decision.*"

In its November 3 Reply CN once again seeks to avoid the Board's explicit oversight language by adopting a definition of "oversight" that clashes with the literal wording of the Board's language. The Board should reject CN's tortured interpretation and honor its promise to the public when it approved this acquisition that, when necessary, it would "impose additional mitigation conditions and take other action" during the five years following CN's consummation of its acquisition of control over EJ&E. The Board's explicit recital of the breadth of its oversight jurisdiction, which CN did not contest during the course of judicial review, speaks for itself and demonstrates that CN's reliance on alleged administrative finality is vastly overstated and frivolous. That additional mitigation during the oversight period might increase the cost to CN of acquiring the EJ&E line was something that CN was well aware of when it consummated the Transaction on January 31, 2009. Having accepted the benefits of the deal with full awareness that the Board could impose post-consummation mitigation, CN is estopped from claiming that the Board did not mean what it said. Otherwise, the Board will be rendered impotent during the oversight period, and the period itself -- with its promise of needed additional mitigation -- becomes wholly illusory.

IV. CN'S CONTENTIONS REGARDING CIVILTECH'S 2011 TRAFFIC STUDY ARE ERRONEOUS AND MISLEADING.

CN's attacks on Civiltech's 2011 Traffic Study, with one exception, are baseless. In order to respond to CN's charges, Robert Andres has prepared a

Supplemental Verified Statement (Ex. 1 hereto) that responds to each of CN's comments specific to the analysis used in the 2011 study. In addition, in response to CN's Verified Statement that "none of CN's crossing gates in Barrington operate in tandem, and all of them use [Constant Warning Time] CWT," Civiltech has rerun its VISSIM studies in order to reflect CN's use of CWT. As Mr. Andres has explained, CN's installation of CWT devices has caused some of the delays to decrease as a result of the shorter gate down times. However, other delays have actually increased as a result of vehicles getting to a crossing (or a queue at that crossing) sooner because they were delayed less at nearby crossings. Civiltech's newly revised calculations, which were necessitated by CN's comments regarding its newly installed CWT system, underscore the unique situation that exists in Barrington due to the close proximity of the various crossings to each other and to major cross streets.

As explained in Robert Andres' Supplemental Verified Statement, a comparison of the Scenario 1 results shows that the total delay at U.S. Route 14 was reduced from +116 hours to +98 hours with the installation of CWT devices (which is still more than double the criterion for substantial effect). However, the total delay at IL Route 59 increased from +64 hours to +91 hours (which is now more than double the criterion for substantial effect thanks to the CWT technology). This indicates that while the CWT devices can shift delays from one crossing to another, their overall delay reduction for all crossings in Barrington is not substantial, and has, in fact, created a two-headed monster of substantial traffic delays and queue lengths at both the SRA

routes running through the downtown Barrington area. The revised delay calculations required by CN's implementation of CWT technology also demonstrate that Civiltech's 2011 analyses of traffic conditions are not only new evidence; they are also a better indicator of impacts than HDR's flawed VISSIM analysis.

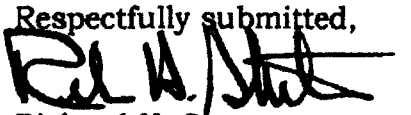
The bottom line is that all of the increased delay is attributed to the increased rail movements and has nothing to do with pre-existing conditions. Hence, additional mitigation is consistent with the Board's consistent position that the railroad should be held accountable for traffic congestion stemming from the increased rail traffic and not from pre-existing conditions. Based on the revised post-CWT calculations that clearly demonstrate the inter-connectedness of traffic at US 14 and IL 59 and the compounding impact of CN's freight at both, as well as the reality that both crossings will experience CN freight-caused delays that are two and a half times the Board's threshold level of vehicular delay and lead to significant queue lengths, Barrington now believes it would be appropriate for CN to be required to pay the full cost of a grade separation at U.S. Route 14.

CONCLUSION

For all the above-stated reasons, the Board should waive its rules and accept the information that has been provided by Barrington with this Motion. Most importantly, the Board should grant Barrington the substantive relief it has requested and require CN to pay the full cost of a grade separation at U.S. Route 14. Simply stated, Barrington has conclusively demonstrated that

adverse impacts it will suffer as a result of CN's acquisition of the EJ&E are virtually identical to those that caused the Board to determine that Aurora and Lynwood were entitled to grade separation mitigation.

Respectfully submitted,



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202-363-2011
Attorney for
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Dated: November 13, 2011

CERTIFICATE OF SERVICE

I, Richard H. Streeter, certify that I have this 14th day of November, 2011, caused a true copy of the foregoing Motion of Village of Barrington, IL For Leave To File Rebuttal (Barr-2), including the accompanying Supplemental Verified Statement of Robert J. Andres, P.E., PTOE, to be served by e-mail or by first class mail, postage prepaid, upon:

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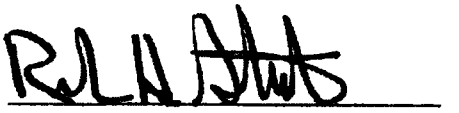

Richard H. Streeter

Exhibit 1

Robert J. Andres, P.E., PTOE

Supplemental Verified Statement

FD 35087 (Sub-No. 8), Canadian National Railway Company and Grand Trunk Corporation-Control-EJ&E West Company

Before the

SURFACE TRANSPORTATION BOARD

Docket No. FD 35087 (Sub-No. 8)

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION – CONTROL – E J & E WEST COMPANY

SUPPLEMENTAL VERIFIED STATEMENT OF
ROBERT J. ANDRES, P.E., PTOE
IN SUPPORT OF VILLAGE OF BARRINGTON'S
PETITION SEEKING IMPOSITION OF ADDITIONAL MITIGATION
PURSUANT TO THE BOARD'S OVERSIGHT JURISDICTION
AND REOPENING PURSUANT TO GOVERNING REGULATIONS

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1. My name is Robert J. Andres. I am a Principal Engineer or Senior Project Manager for Civiltech Engineering, Inc., which I co-founded in 1988. I have previously submitted a Verified Statement in this sub-docket. A true copy of the "*Village of Barrington, CN Railway Traffic Impact Study Update, Final Report,* dated September 1, 2011, was attached thereto and made a part of my Verified Statement.

2. I have carefully reviewed *CN's Reply in Opposition to the Village of Barrington's Petition Seeking Imposition of Additional Mitigation* and the Verified Statement of Mark Ryon. In response to the various arguments and Mr. Ryon's Statement, I will offer the following comments.

3. I acknowledge and accept Mr. Ryon's criticism that the VISSIM models in Civiltech's 2008 and 2011 studies were based on 2008 measures of actual gate down times for the EJ&E Railway train operations, which did not provide for "Constant Warning Time" (CWT) signal operation. Now that the CN Railway has upgraded these devices to CWT operation, the VISSIM models have been rerun to reflect current gate down times so as to present the Board with accurate information regarding the situation in Barrington as compared with the situation in Aurora. The reduction in gate down times provided by the CWT devices resulted in the following revisions to 2015 Changes in Transaction-related delays from the No Acquisition Scenario (i.e. delays solely attributable to the Transaction):

Table A

VISSIM Model Scenario	Total 24-Hour Roadway Segment Delay	
	U.S. Route 14	IL Route 59
Scenario 1 – Change from No Acquisition		
Delay with EJ&E Gate Down Times	+116 hrs.	+64 hrs.
Delay with CN "CWT" Gate Down Times	+98 hrs.	+91 hrs.
Scenario 2 – Change from No Acquisition		
Delay with EJ&E Gate Down Times	+122 hrs.	+68 hrs.
Delay with CN "CWT" Gate Down Times	+100 hrs.	+34 hrs.

The important fact to note from the above Table A is that, even with the CWT devices, the delays at the U.S. Route 14 crossing are still 2.5 times the STB's substantial effect criterion.

4. As the foregoing demonstrates, CN's installation of CWT devices has caused some of the delays to decrease as a result of the shorter gate down times. However, other delays have actually increased as a result of vehicles getting to a crossing (or a queue at that crossing) sooner because they were delayed less at nearby crossings. It is my professional opinion that Civiltech's newly revised calculations, which were necessitated by CN's comments regarding its newly installed CWT system, underscore the unique situation that exists in Barrington due to the close proximity of the various crossings to each other and to major cross streets.

5. In addition, although the comparison of the Scenario 1 results shows that the total delay at U.S. Route 14 was reduced from +116 hours to +98 hours with the installation of CWT devices (which is still more than double the criterion for substantial effect), the total delay at IL Route 59 increased from +64 hours to +91 hours (which also is now more than double the criterion for substantial effect). This indicates that while the CWT devices can shift delays from one crossing to another, their overall delay reduction for all crossings in Barrington is not substantial. Indeed, despite the delay reduction benefits of the CWT devices, the Transaction has still resulted in substantial traffic delays and queue lengths at both the SRA routes running through the downtown Barrington area.

6. In response to CN's remaining contentions, the following sets forth the entirety of CN's attack on Civiltech's study followed by my response.

CN Contention at Reply Page 2 and Footnote 4 – "In determining whether and what mitigation was appropriate at a particular grade crossing, SEA considered a 'host of factors...'"

Response – A review of the eight crossings that the Board ultimately designated as "substantially affected" and in need of mitigation demonstrates that SEA/HDR erred when it initially omitted Barrington US 14 from the original list of substantially affected crossings – an error that SEA seems to concede in an unspoken fashion by the fact that SEA discusses possible mitigation at both IL 59 and US 14 in its explanation of mitigation recommendations in Barrington despite the fact that US 14 never made the initial "substantially affected" threshold list. (FEIS at 4-14 and 4-15) In the attached comparative summary of the rationale behind its mitigation decisions at the eight crossings, one can clearly see that both US 14 and IL 59 (especially US 14) were treated in a disparate manner from Aurora and Lynwood. If US 14 had been analyzed ***accurately*** at any point in the EIS process and not just "differently", it would not have been lumped together with the other crossings that were awarded traffic advisory signs based on the severe impacts at the US 14 crossing. Unfortunately, these impacts were minimized due to inaccurately analyzed vehicle delays by HDR and an apparent dismissal of the compounding effects of the long queue lengths at both of the SRA routes running through Barrington. Instead, Barrington was denied equitable relief based on the unfounded assumptions that: (1) a grade separation would not help traffic conditions; (2) a grade separation would force CN to mitigate congestion not

caused by its freight traffic; and, (3) the claim that any grade separation in Barrington would "severely affect the character of the community."

CN Contention at Reply Page 4 – CN claims that Barrington is inferring that the initial SEA analysis was incorrect at all crossings on the line: " ...by implication, everywhere along the EJ&E line."

Response – SEA used an initial analysis methodology that is appropriate for isolated rural conditions as its delay calculations assume an idealized crossing isolated from any conditions that would influence traffic flow other than the railroad. Barrington does not presume to imply any knowledge as to where on the EJ&E such idealized conditions may or may not exist. With the exception of the VISSIM analysis done in Aurora in May/June 2011, Barrington has conducted no studies that could verify or refute SEA's initial analysis methodology at any other crossing(s) on the EJ&E.

CN Contention at Reply Pages 4 and 5 – "And its 2011 Study, like its 2008 Study, ignores the fundamental point made by Board (sic), and acknowledged and left undisturbed by the Court, that much of Barrington's present and expected traffic congestion stems from pre-existing conditions unrelated to the Transaction that, under its longstanding practice, do not call for Board-imposed mitigation. See Village of Barrington, 636 F.3d at 672; Final Decision at 38 n.82; FEIS at 4-14."

Response – Neither the 2008 Study nor the 2011 Study ignore present and expected future traffic congestion, nor does Barrington call for Board-imposed mitigation of congestion problems that are unrelated to the effects of the Transaction. Rather, both studies clearly quantify Total 24-Hour Roadway Segment Delays from all sources at each individual CN railway crossing in 2015 for the No-Action and Post-Transaction scenarios, and then separate out

the delays that are solely attributable to the CN Transaction. It is only for these Transaction-related delays that the Village seeks additional Board-imposed mitigation.

CN Contention at Footnote 7 – "Barrington does not assert that Route 14 satisfies the multiple criteria other than delay that the Board considered, in its discretion, in deciding whether to order grade separation funding. Instead, Barrington concedes that, unlike the Aurora crossing for which the Board did order grade separation funding, Route 14 does not reach the Board's vehicle/train exposure threshold level of concern. Pet. at 13; 2011 Study at 17."

Response – Barrington **does** assert that the U.S. Route 14 crossing satisfies multiple criteria that would qualify it for a grade separation. Similar to the Aurora crossing, U.S. Route 14 is important to the region's mobility as it carries a very high volume of traffic and is designated as a Strategic Regional Arterial (SRA) route. It experiences an excessive amount of delay (in fact, even HDR's VOBTOA predicted a peak hour queue length increase of 2,100 feet at the U.S. Route 14 crossing as a result of the Acquisition, where the total queue failed to dissipate 20 minutes after the train event) and nearby alternate routes are not readily available in the vicinity of the crossing. Like the U.S. Route 30 crossing in Lynwood, however, the only criterion that U.S. Route 14 falls short on is the vehicle/train exposure threshold. It is instructive to note that the two grade crossings at Woodruff Road and Washington Street in Joliet fail to meet the "exposure threshold". Despite that, the Board explicitly stated that if Joliet had not already entered into a negotiated agreement with CN, "SEA would have

recommended mitigation for those crossings that could have included grade separation." Decision No. 16 at 45. See, Attachment 1 hereto.

In addition, Barrington's October 14 Petition provided a comparison chart that clearly outlined multiple criteria that would justify a grade separation at U.S. 14 by comparing conditions at that crossing with conditions at U.S. 34 in Aurora. That chart – amended to provide post-implementation use of CWT technology is found on the following page.

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COMPARISON OF CN RAILWAY CROSSINGS OF U.S. ROUTE 14 IN BARRINGTON AND U.S. ROUTE 34 IN AURORA

Comparison	U.S. Hwy 14 In Barrington	U.S. Rte. 34 In Aurora
SRA Route	Yes	Yes
Nearby Rail Line That Also Impacts Traffic Flow	Yes	No
Nearby SRA That Also Impacts Traffic Flow	Yes	No
Nearby Available Alternate Route	No	No
Travel Distance to Nearest Alternate Grade Separation	4-6 miles	2-3 miles
2007 Average Daily Traffic Volume	28,500 vpd	36,400 vpd
2015 Average Daily Traffic Volume	30,700 vpd[1]	46,110 vpd[2]
Existing Roadway Capacity Constraints	Yes	Yes
Meets FHWA Exposure Criterion	No[3]	Yes
Pre-Acquisition Daily Train Volumes	5 trains	16 trains
Post-Acquisition Daily Train Volumes	20 trains 300% increase	40 trains 150% increase
Designated as a Substantially Affected Crossing in FEIS	No[4]	Yes
Increase in Hours of Daily Vehicular Delay in 2015 Due to CN Freight Traffic	+98 to +100	+114

Footnotes:

[1] Civiltech's Village of Barrington forecast. FEIS forecast was 33,949 vpd. The U.S. Route 14 forecast ADT is the third highest of any of the roads that cross the EJ&E per Civiltech projections and second highest per SEA projections.

[2] FEIS forecast.

[3] Although the Lynwood crossing also fell short of that exposure factor criterion, the Board determined that it should be grade separated. If Joliet hadn't reached a negotiated settlement with CN, two of its crossings may also have been awarded a grade separation despite the reality that neither would meet the FHWA Exposure criterion.

[4] The rudimentary analysis methodology first employed by HDR coupled with its inadequate VISSIM analysis and the consultant's failure to recognize U.S. Route 14 as an SRA led to U S. Route 14 being left off the list of "substantially affected" crossings for the entire environmental review process.

CN Contention at Reply Page 11 and Footnote 22 – Reply 11: "In fact, the 2011 Study shows less of an effect due to additional trains in 2015 than the 2008 Study.[22]"

Footnote 22: "Table 1 addresses the two 2015 scenarios for which the 2008 Study and the 2011 Study are most comparable: the No Action Scenario and Scenario 1. The comparisons are imperfect since Civiltech made various

changing assumptions and errors regarding train speeds and lengths and other variables."

Response – Because traffic volumes in Barrington vary dramatically throughout the day, the time of day that trains run, as well as their length and speed have a measurable impact on the cumulative 24-hour traffic delays caused by rail operations at individual crossings. The 2008 study had to speculate as to the times of day that the CN would run freight trains in 2015. The 2011 study refined the predicted 2015 CN train schedule based on measures of actual post-Transaction CN freight train operations. Because trains in the 2011 study ran at different times of day than in the 2008 study, the delay impacts, as one would expect, are not identical. The important factor to understand from Table 1 in CN's Reply is not that the increase in delay at U.S. Route 14 varies slightly from model to model, but that the magnitude of the cumulative delay increase at the crossing as a result of the Transaction in both models is nearly 2.5 times the threshold for the STB substantial effect criterion, which is well above the 31.8 hours predicted at U.S. Route 14 in the FEIS.

CN Contention at Reply Page 11 and Footnote 23 – Reply 11: "The Board found that the results of the 2008 Study showing higher total traffic delays for roadway segments (a broader measure than SEA used in measuring whether crossings met its 40-hour total vehicle delay threshold)[23] were not a sufficient basis for ordering grade separation funding."

Footnote 23: "The delay output of Barrington's VISSIM analysis "includes the cumulative delay from all sources on the roadway network, such as intersection delays, capacity constraints and traffic flow restrictions or

interruptions, in addition to railroad crossing delays." 2011 Study at 4 (emphasis added)."

Response – The VISSIM model indeed calculates total vehicle delay from all sources on the roadway network. However, because all other factors between scenarios are equal other than changes in train operations, when the No-Action total vehicle delay on the approaches to a crossing is subtracted from the Post-Acquisition total vehicle delay on the same crossing approaches, the Total 24-Hour Roadway Segment Delay that is attributable solely to the increase in CN rail traffic (and not from any other sources) is obtained. Thus, both Civiltech studies reported delay increases that would result solely from the Transaction.

CN Contention at Footnote 24, Bullet #1 – Footnote 24: "From the limited information provided concerning Civiltech's 2011 Study, it appears that Civiltech made a number of choices that, even assuming the general premise of its approach, are factually and methodologically questionable, and cast doubt on the Study's conclusions. These include:"

• Bullet #1: "Civiltech incorrectly states in its study that CN crossing gates in Barrington are operated in tandem and do not use constant warning timing ("CWT") (2011 Study at 2), both of which would increase gate down time and vehicular delays. In fact, none of CN's crossing gates in Barrington operate in tandem, and all of them use CWT. See V.S. Ryon at 2."

Response - The VISSIM models in the 2008 and 2011 studies were based on 2008 measures of actual gate down times for the EJ&E Railway train operations, which did not provide for "constant warning time" (CWT) signal operation. Now that the CN railway has upgraded these devices to CWT operation, the 2015 VISSIM models have been rerun to reflect current gate down times (measured on 11/07/11). The revised VISSIM analyses show that

the reduced gate down times made possible by the CWT devices have indeed reduced delays at some crossings. However, due to the complex interactions of traffic flowing over closely spaced railroad crossings, delays at other crossings have actually increased (i.e. a vehicle that was previously delayed at one crossing can be released sooner only to approach a second crossing where it is delayed by the vehicle queue at that location and thus counted in the delay total for the second crossing). As noted earlier at page 2, the effect of longer trains in Scenario 2 diminishes the benefits of the CWT devices, again delaying vehicles at perimeter crossings thereby reducing delays at IL Route 59.

CN Contention at Footnote 24, Bullet #2 – "Civiltech manipulated pre- and post-Transaction train speeds in its model with the effect of increasing Transaction-related vehicular delay. Its pre-Transaction and No Action scenarios use an EIS estimated train speed of 38 mph instead of the observed actual pre-Transaction speed of 16-24 mph (2011 Study at 11), but its 2015 post-Transaction scenarios ignore the 39 mph EIS estimate and use an average speed of 32 mph based on its 2011 observations (id. At 12-13)."

Response - Civiltech did **not** "manipulate" pre- and post-Transaction train speeds to increase Transaction-related vehicular delay. At the time observations of "existing" EJ&E train operations were made in 2008, the EJ&E Railway was conducting track maintenance operations near Barrington which resulted in a slow zone for EJ&E train operations. Indeed, 2 of the 7 trains that were observed at that time were short slow-moving maintenance trains. It is believed that the maintenance operations contributed to slower than normal speeds for all trains which ranged from 16 to 24 mph. The Existing Conditions scenario was modeled using the actual train speeds. However, for the 2015

No-Action scenario, the 38 mph train speed used by SEA in its calculations for the DEIS was utilized as it was believed to be a more representative speed for trains under normal operating conditions. For the 2015 post-Transaction scenarios, the 2011 Civiltech study used the actual 2011 measured CN trains speeds (which averaged 32 mph), rather than the 39 mph speed estimated in the FEIS.

CN Contention at Footnote 24, Bullet #3 – "In a departure from its 2008 study, Civiltech inflated assumed levels of peak hour vehicular traffic by ignoring summer traffic patterns and focusing exclusively on fall patterns when peak time traffic and congestion is greatest. 2011 Study at 8."

Response – Civiltech did not inflate assumed levels of peak hour traffic by focusing on fall patterns when peak time traffic and congestion is greatest. Traffic volumes on all roadways vary not only by time of day and day of week, but by the time of year as well. In downtown Barrington during the summer months, not only are average daily traffic volumes affected by vacations and summer dismissal for schools, but the hourly distribution of traffic shifts slightly between the peak hours and off-peak hours. In order to model traffic conditions that are typical in Barrington nine months out of the year, the Civiltech studies adjusted counts taken during the summer months for seasonal variations in traffic, in accordance with standard traffic engineering practices.

CN Contention at Footnote 24, Bullet #4 – "Civiltech artificially increased delay for the post-Transaction scenarios as compared to the No Action scenario by optimizing traffic signal timing for its pre-Transaction and No Action

scenarios but not doing so for its post-Transaction scenarios. Id. at 8, 11."

Response - Civiltech did not artificially increase delay for post-Transaction scenarios as compared to the No-Action scenario by selectively optimizing traffic signal timings. Traffic signal timings were optimized for all 2015 No-Action and post-Transaction scenarios to reflect the most efficient traffic signal operations under increased future traffic demands. Adjusted traffic signal timing inputs were identical in each of the 2015 model scenarios.

CN Contention at Footnote 24, Bullet #5 – "Based on Civiltech's Exhibit A-2, Civiltech appears to have omitted from its road network definition the stoplight at Lake Cook Road and Route 14. Cf. FEIS, App. A at 56-57."

Response – Two aspects of the roadway network that is modeled in VISSIM are important to the accuracy of the model output results. The first aspect is the overall limits of the model. The overall model must be broad enough to include all roadway segments that are affected by railroad crossing delays from all of the CN crossings that are under study. The second aspect that is important to output data accuracy is identification of the portion of the roadway network that is affected by crossing delays from each individual railroad crossing (i.e. the portion of the network over which train delays at an individual crossing are measured). For example, the roadway limits affected by delays at the U.S. Route 14 crossing are different than the roadway limits affected by delays at the Main Street (Lake Cook Road) crossing. Measurement of crossing delays attributed to the U.S. Route 14 crossing should not include delays on roadway segments that are far removed from the U.S. Route 14 crossing. The U.S.

Route 14 intersection with Main Street (Lake Cook Road) is far removed from **any** CN rail crossings and thus experiences no CN railway-related traffic delays. Therefore, it was not included in Civiltech's overall roadway network.

HDR's VOBTOA, however, included an expansive roadway network encompassing 5.8 miles of Village streets, much of which is well beyond the areas affected by CN train delays (which included the U.S. Route 14/Lake Cook Road intersection). One of the shortcomings of the modeling results reported in the VOBTOA is that it did not calculate delays at individual crossings; but it instead reported percent changes in peak hour delays averaged over the entire expansive roadway network. By including vehicle delays from all sources at far removed locations, the substantial change in delays attributable to CN rail operations at individual crossings became a small percentage of the total traffic delay measured over the broad highway network.

CN Contention at Reply Page 12– Reply 12: "The focus of the 2008 Study and the 2011 Study is a methodological disagreement between Barrington's consultants and SEA (and the Board's consultants) regarding modeling and assumptions – not any new evidence."

Response – The Reply contention on page 12 attempts to characterize the differences between Barrington's 2011 study and the findings of the FEIS as nothing more than engineers dueling over a "methodological disagreement ... regarding modeling and assumptions". That characterization, however, is far from the truth. In fact, this contention goes to the heart of the Village's case that the STB ruling was based on a rudimentary analysis procedure in the

DEIS that was inaccurate for the unique conditions in Barrington, and that material errors and omissions in the high-level VISSIM analysis contained in the FEIS led to incorrect or unsupported conclusions.

In Barrington's DEIS comments, it attempted to point out that the rudimentary analysis method used in the DEIS to calculate 24-hour cumulative crossing delays (one which assumed constant traffic throughout the day over an isolated idealized crossing, as well as constant traffic arrival and discharge rates before and after a train event) was highly inaccurate given the unique conditions in Barrington. In their DEIS comments, the Village implored the SEA and the STB to use an analysis methodology that recognized the fact that peak hour traffic conditions are dramatically different than "average" hourly conditions (e.g. on urban arterial highways, peak hour traffic volumes are typically as much as three times greater than the average hourly volume for the remainder of the day). Barrington did not intend that ***only*** the peak hours should be analyzed, but that all of the variables that affect vehicle delay in Barrington should be considered. The DEIS comments went on to present the results of the Village's 2008 VISSIM study which accounted for these variables and which yielded dramatically different 24-hour crossing delay results.

In the FEIS, HDR acknowledged the unique conditions in Barrington, but it ignored the Village's 24-hour VISSIM results. Instead, it prepared the VOBTOA which modeled only two peak hours with VISSIM and then averaged the delay

results over the entire street network rather than reporting results for individual crossings. The FEIS erroneously concluded that the peak hour VISSIM results somehow validated the 24-hour rudimentary analysis results for Barrington.

This is more than a methodological disagreement regarding modeling and assumptions. It exposes a material error in the FEIS that led to incorrect and unsupported conclusions by the STB. Had the VOBTOA conducted a 24-hour VISSIM analysis rather than peak hour analyses and had it quantified delays at individual crossings in accordance with STB substantial effect criteria rather than averaging them over a 5.8-mile street network, the STB would have had accurate data that mandated a different result and ordered a grade separation in Barrington.

CN Contention at Reply Pages 12 and 13 and Footnote 26 – Reply 12 and 13: "And the absence of any new material facts is underlined by the similarities between the conclusions of Barrington's two studies.[26] The 2011 Study demonstrates only that Barrington continues to believe that the analysis in the EIS could have been done differently."

Footnote 26: "Barrington does not suggest, for example, that it would have been less entitled to a grade separation based on the results of the 2008 Study than it would be would be based on the results of the 2011 Study. Instead, it argues that the 2011 Study "confirms" that the Board erred in not imposing a grade separation condition based on the 2008 Study. Pet. at 14."

Response – Barrington believes that the analysis in the EIS could have and should have been done "accurately" in accordance with the STB substantial effect criteria, rather than just done "differently". Despite the minor differences between the 2008 and 2011 Barrington study results, they both indicate that

the U.S. Route 14 crossing exceeds the substantial effect delay criterion by a factor of two and a half times. In light of this evidence -- and when the U.S. Route 14 crossing is compared to the Aurora crossing -- the STB should indeed order construction of a grade separation in Barrington.

CN Contention at Footnote 28 – "Barrington assumes (i) that the 6-train 2011 snapshot defines the times at which 20 trains per day will run in 2015; (ii) that there will be no increase in average train speed after CN finishes its planned improvements on the line; and (iii) in its Scenario 2, that trains will be substantially longer than predicted in the FEIS or observed in 2011 (while failing to consider that if CN ran longer trains than predicted, it would need fewer of them to carry the same freight). 2011 Study at 12-13 & Tables A-2 & A-3."

Response – Barrington's 2011 study modeled three future scenarios that each included the predicted 20 CN freight trains per day in 2015, but which varied train speeds and lengths based on measurements of actual CN train operations through Barrington in 2011. Scenario 1 modeled 20 trains ranging in speed from 28 to 35 mph and in length from 3,800 to 7,800 feet. The average train speed of 32 mph and the average train length of 5,835 feet are the averages of actual CN operations during the 2011 observation period. Scenario 2 modeled the effect of longer trains traveling at the same average speed as Scenario 1. Scenario 3 was identical to Scenario 1 except that it modeled a grade separation at U.S. Route 14.

Barrington does not purport that train speeds or lengths will not increase in the future to the levels predicted by the CN. The 2011 study was intended to demonstrate the 2015 delay impacts of today's CN rail operating

characteristics, the sensitivity of those delay impacts to longer trains, and the substantial delay reduction impacts that would result from a grade separation at U.S. Route 14, even without improvements at nearby intersections.

CN Contention at Reply Page 17 and Footnote 30 – Reply 17: "Third, Barrington's principal criticisms of the Board's environmental review are meritless, and Barrington's repeated assertions that the Board was "misled" by its own SEA and its own consultants are frivolous. For example, there is no merit to (a) Barrington's critique of SEA's use, in the supplemental VOBTOA Study, of a peak-period analysis, instead of a 24-hour analysis;[30]"

Footnote 30: "Pet. at 14-15, 20-21. Barrington's critique asserts that CN imposes a "freight train curfew" during peak periods, and that rail traffic modeled in the VOBTOA Study was therefore unrepresentatively low (id. at 14); that the Board was unaware that the peak-period analysis "could not be legitimately compared" to a 24-hour analysis (id. at 20); and that the VOBTOA Study's conclusion is wrong (id. at 14-15). Yet Barrington's own train observations confirm that there is no absolute curfew. Moreover, the purpose of the peak-hours study was not to duplicate a 24-hour study, but to supplement the Board's earlier traffic analysis and respond to Barrington's specific criticisms. The choice of a peak hour for study was logical because that is when the highest vehicular traffic volume occurs (which Barrington does not deny), and Barrington had criticized the DEIS for not analyzing peak hour conditions (Barrington DEIS Cmts. at 35). In any event, potentially reduced peak hour traffic could not undermine the VOBTOA Study because the Board's consultants specifically assumed that trains would run during peak hours (otherwise they would have had nothing to model). As to the conclusions of the study, Barrington says nothing about SEA's equally important conclusion that "there was no increase in the number of intersections operating at an unacceptable LOS under the Proposed Action scenario." VOBTOA Study at 46; FEIS App. A.5 at 100."

Response – Barrington's 35-day observation of CN rail operations found that there is indeed no absolute peak hour train curfew. However, the observations tabulated in Table A-1 of the 2011 study indicate that over that period, only 14 of the 211 trains observed occurred during the A.M. or P.M. peak hours. In accordance with these actual train CN operations, the Barrington 2011 study

limited trains in the peak hours but ran trains of comparable lengths immediately before and after the peak hours in accordance with the CN's current operational practice.

For a response to the contention that a peak hour VISSIM analysis supplements the Board's earlier 24-hour rudimentary analysis and responds to Barrington's specific criticisms, see the above Response to CN Contention at Reply Page 12 and Footnote 25 on page 13 of this Supplemental Verified Statement.

In regard to SEA's "equally important conclusion" that "there was no increase in the number of intersections operating at an unacceptable LOS under the Proposed Action scenario", the conclusion is meaningless in Barrington because, according to the Village's capacity analysis, the major intersections that are adjacent to the IL Route 59 and U.S. Route 14 crossings already operate at an unacceptable Level of Service in both the A.M. and P.M. peak hours under existing traffic conditions. Thus, there can be no increase in the number of major intersections that operate at unacceptable Levels of Service under the Post-Acquisition scenario in Barrington.

CN Contention at Reply Pages 17 and 18 and Footnote 31 – Reply 17/18: "...For example, there is no merit to: ... (b) Barrington's critique of the VOBTOA Study on the grounds that Civiltech disagrees with the road network across which traffic delay projections were modeled;[31]"

Footnote 31: "Pet. at 15-16. This is a matter of professional judgment, and Barrington's criticisms, which are vague, conclusory, and unsupported by objective evidence, do not show that Civiltech's judgment is superior. Moreover, the road network definition used by Civiltech in its model appears flawed, since Civiltech evidently failed to take into account the stoplight at Lake Cook Road

and Route 14 and the accompanying relevant road network. Compare 2011 Study, Ex. A- 2, with FEIS, App. A at 56-57. In any event, Barrington has made no showing that HDR's network definition had any material impact on HDR's results. Indeed, even from the sketchy information provided by Civiltech, which does not allow for a direct comparison, it appears that Civiltech used an even larger network. Cf. 2011 Study, Ex. A-2 to VOBTOA at 2-4, FEIS App. A.5 at 57."

Response – See above responses to CN Contention at Footnote 24, Bullet #5 and CN Contention at Reply Page 12 and Footnote 25 on pages 12 and 13 of this Supplemental Verified Statement. Also, the size of the VISSIM network does not have a material effect on the results per se (unless, of course, the network is too limited). What does have a significant effect on the results, however, is how the railroad crossing delays are computed. The SEA methodology for evaluating the impact of a proposed action was to compute the change in railroad delays at each crossing location and compare it to STB criteria for substantial effect. The VOBTOA, however, failed to calculate delays at each individual crossing and instead reported Transaction delays as a percentage change of delays from all sources averaged over the entire roadway network. Measuring Transaction delays in this manner obfuscates the fact that, had they been measured at each individual crossing location (as they were measured at every other crossing along the EJ&E in the EIS), the change in delays would have been dramatically larger than what the VOBTOA characterized as only a small percentage increase compared to delays across the entire network.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Robert J. Andres, P.E., PTOE, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Supplemental Verified Statement.

Executed on November 14, 2011.

Robert J. Andres

Attachment 1

Robert J. Andres, P.E., PTOE

Supplemental Verified Statement

FEIS SUBSTANTIALLY AFFECTED CROSSINGS – REASONING BEHIND GRADE SEPARATION DECISIONS

Crossing (ADT)	Grade Separation Ordered?	Meets Exposure Criteria?	Mitigation Ordered	Daily Hours of Vehicle Delay	Queue Lengths	Misc. GS Denial Criteria	Misc. GS Denial Criteria
Old McHenry Rd in Hawthorn Woods (32,494)	NO	NO	traffic advisory sign	42.3 hours	1,186 feet	Did not meet exposure risk criteria	N/A
Main Street in Lake Zurich (7,474)	NO	NO	traffic advisory sign	Did not meet 40-hour delay threshold	577 feet	Grade separation exists 1/2 mile away	Roadway geometry would complicate construction
IL 59 (Hough St) In Barrington (22,549)	NO	NO	traffic advisory sign	31.6 hours per FEIS 91 hours per Civiltech	1,550 feet	Existing poor traffic conditions would not be improved by a grade separation	Grade separation would "severely affect the character of the community"
US 34 (Ogden Ave.) In Aurora (46,110)		YES	N/A	73 hours per FEIS 114 hours per Civiltech	1,322 feet	N/A	N/A
Plainfield-Naperville Rd in Plainfield (8,117)	NO	NO	traffic advisory sign	Did not meet 40-hour delay threshold	440 feet	Grade separation exists 500 feet away	
Woodruff Rd in Joliet (10,659)		NO	N/A	156 hours	1,814 feet	N/A	N/A
Washington St. in Joliet (11,714)		NO	N/A	164.7 hours	2,371	N/A	N/A
US 30 (Lincoln Hwy) in Lynwood (29,237)		NO	N/A	50.6 hours	940 feet	N/A	N/A

US 14 (Northwest Hwy) in Barrington (30,700)		NO	traffic advisory sign	31.8 hours per FEIS 98 hours per Civiltech	2,100 feet	Grade separation would have minimal impact on traffic flow	Applicant not responsible for mitigating existing traffic congestion